

Message Text

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PAGE 01 STATE 026616
ORIGIN IO-14

INFO OCT-01 AF-10 ISO-00 L-03 CPR-01 SS-15 SY-05
NSC-05 CIAE-00 INR-07 NSAE-00 PRS-01 SP-02 EB-08
/072 R

DRAFTED BY IO/UNP:LHAGE:L/UNA:DPSTEWART:MAB
APPROVED BY IO:RLBARRY
IO/UNP:TNILES
AF/C:WLSWING
L:LRMARKS
IO/UNA:AHOLLOWAY (INFO)

-----117801 011732Z /64

P 011703Z PEB 78
FM SECSTATE WASHDC
TO USMISSION USUN NEW YORK PRIORITY
INFO AMEMBASSY BRAZZAVILLE PRIORITY

C O N F I D E N T I A L STATE 026616

E.O. 11652: GDS

TAGS: PDIP, CF

SUBJECT: CASE OF GRAY VS. CONGO MISSION

REF: (A) USUN 196; (B) USUN 175

1. SUMMARY. DEPARTMENT SHARES MISSION'S CONCERN OVER
ADVERSE IMPACT ON NEW YORK DIPLOMATIC COMMUNITY OF CON-
TINUATION OF DISPUTE CONCERNING CONGOLESE MISSION PROPERTY.
NOW THAT DECISION HAS BEEN RENDERED DISMISSING LITIGATION,
USUN IS REQUESTED TO APPROACH CONGOLESE AT AMBASSADORIAL
LEVEL TO EXPLAIN OUR CONCERN AND OFFER OUR GOOD OFFICES TO
FACILITATE PROMPT SOLUTION. END SUMMARY.

2. DEPARTMENT HAS REVIEWED FEDERAL DISTRICT COURT DECI-
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SION DATED JANUARY 18 WHICH (A) DISMISSED CONTEMPT AND
EVICTION ACTION AGAINST CONGO MISSION AND (B) VACATED
PREVIOUS FORECLOSURE ACTION FOR FAILURE TO COMPLY WITH
SERVICE OF PROCESS REQUIREMENTS OF FOREIGN SOVEREIGN
IMMUNITIES ACT OF 1976. ALTHOUGH PLAINTIFF GRAY MAY
APPEAL OR FILE NEW ACTION AFTER OBSERVING PROPER PROCE-

DURES, THIS DECISION APPEARS (AT LEAST FOR NOW) TO RESTORE OWNERSHIP OF DISPUTED PROPERTY TO CONGO MISSION, PRESUMABLY WITH AN OBLIGATION TO SATISFY ITS RESPONSIBILITIES TO GRAY UNDER MORTGAGE.

3. AS A RESULT OF THIS DECISION, BOTH PARTIES MAY NOW BE AMENABLE TO REACHING AN EXPEDITIOUS SOLUTION TO THIS DISPUTE. TO ENCOURAGE THEM ALONG THESE LINES, DEPARTMENT BELIEVES APPROACH SHOULD BE MADE TO CONGOLESE AT AMBASSADORIAL LEVEL EXPRESSING OUR UNDERSTANDING FOR PROBLEMS THEY MAY HAVE ENCOUNTERED (GIVEN APPARENT UNFAMILIARITY WITH LOCAL CONDITIONS) BUT POINTING OUT NEGATIVE IMPLICATIONS FOR THEM AND OTHER UN MISSIONS AND PERSONNEL IF SITUATION IS NOT RESOLVED PROMPTLY.

4. CONGOLESE SHOULD BE GIVEN TO UNDERSTAND THAT WHOLLY APART FROM MERITS OF LITIGATION, SITUATION PRESENTS CERTAIN DIPLOMATIC PROBLEMS OF CONCERN TO USG. AS HOST COUNTRY TO THE UNITED NATIONS, THE UNITED STATES HAS OBLIGATIONS TO UN MISSIONS AND THEIR PERSONNEL AS WELL AS TO U.S. CITIZENS. WE UNDERSTAND SOME NEW YORK LANDLORDS HAVE ALREADY REFUSED TO RENT TO PERSONNEL OF OTHER UN MISSIONS ON BASIS OF PRESS REPORTS CONCERNING CONGO DISPUTE. CONTINUATION OF DISPUTES (PARTICULARLY IN VIEW OF INCREASING PRESS COVERAGE) WOULD NOT BE TO BENEFIT OF THE CONGOLESE OR OF OTHER UN MISSIONS. USUN AND DEPARTMENT HAVE BEEN FOLLOWING SITUATION CLOSELY AND CONFIDENTIAL

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ARE WILLING TO PROVIDE ANY ASSISTANCE WE CAN IN FACILITATING PROMPT SOLUTION.

5. FYI. CONGOLESE ARE OF COURSE ENTITLED TO MAKE USE OF U.S. COURTS TO RESOLVE DISPUTE. DEPARTMENT HAS (AND HAS HAD) NO INTENTION OF INTERFERING IN PENDING LITIGATION. HOWEVER, ALTHOUGH SOVEREIGN IMMUNITY MAY BE AVAILABLE AS A LEGITIMATE DEFENSE TO AN ACTION BROUGHT AGAINST FOREIGN MISSIONS IN OUR COURTS, WE ARE FACED WITH PARTICULAR PROBLEMS WHERE IT IS USED TO PREVENT RESOLUTION OF DISPUTES INVOLVING U.S. CITIZENS. DEPARTMENT IS PREPARED TO SEE CONGOLESE EITHER LITIGATE DISPUTE ON THE MERITS OR (PREFERABLY AT THIS POINT) SEEK EXPEDITIOUS SOLUTION OUT OF COURT. WE ARE NOT PREPARED TO ACQUIESCE IN USE OF SOVEREIGN IMMUNITY SIMPLY TO PREVENT SOLUTION. END FYI.

6. DEPARTMENT LEGAL OFFICER HAD LENGTHY CONVERSATION JANUARY 26 WITH CONGO MISSION ATTORNEY O'CONNOR, WHOSE CONCERNS APPEARED TO FOCUS ON "PREJUDICIAL" PRESS REPORT OF DISPUTE AND ON "INTERFERENCE" IN LITIGATION.

O'CONNOR DECLINED TO INDICATE WHETHER HE WAS PREPARED TO
MAKE USE OF OUR "GOOD OFFICES" AND EMPHASIZED ADVERSE
IMPACT OF DISPUTE ON U.S.-CONGO RELATIONS. USUN SHOULD
INDICATE TO CONGOLESE THAT WE HAVE BEEN IN CONTACT WITH
THEIR ATTORNEY, HAVE EXPLAINED TO HIM OUR INTERESTS AND

CONCERNS AS HOST COUNTRY, AND NOW WISH TO MAKE THESE
CLEAR ON DIPLOMATIC LEVEL AS WELL.

7. IN CONVERSATION JANUARY 30 WITH DEPARTMENT LEGAL
OFFICER, GRAY'S ATTORNEY BRICKMAN SAID HE WAS CONSIDERING
FILING BOTH APPEAL AND NEW ACTION. HE ALSO SAID HE WOULD
WELCOME DEPARTMENT'S ASSISTANCE AND WAS PREPARED TO
RECOMMEND THAT HIS CLIENT ACCEPT PAYMENT ON MORTGAGE
"SPREAD OVER A FEW MONTHS". BRICKMAN INDICATED
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SENATOR MOYNIHAN'S OFFICE HAD TAKEN INTEREST IN CASE.
BRICKMAN UNDERSTANDS EITHER DEPARTMENT OR USUN WILL
CONTACT HIM AGAIN IN ONE WEEK. VANCE

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*** Current Classification *** CONFIDENTIAL
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*** Current Handling Restrictions *** n/a

*** Current Classification *** CONFIDENTIAL

Message Attributes

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Capture Date: 01 jan 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
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Copy: <CONCATENATED>
Draft Date: 01 feb 1978
Decaption Date: 01 jan 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 20 Mar 2014
Disposition Event:
Disposition History: n/a
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Enclosure: n/a
Executive Order: GS
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Expiration:
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Reference: 78 USUN NEW YORK 196, 78 USUN NEW YORK 175
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Secure: OPEN
Status: <DBA CORRECTED> gwr 970822
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TAGS: PDIP, CF, US, PDIP
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Review Markings:
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Declassified/Released
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EO Systematic Review
20 Mar 2014
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